FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Civil Revision Application No. 2/2006

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Shri. N.D. Khamborkar, Adv. for petitioners.
Shri Sameer Sohoni, Adv. for R-sole.

CORAM : B.R. Gavai, J.
DATED : September 4, 2006.

By way of present revision application, the applicants challenge the order passed by the learned 4th Ad hoc Additional District Judge, Wardha, dated 25th November, 2005, thereby reversing the judgment and order passed by the learned Civil Judge, Jr. Dn., Hinganghat, dated 26th July, 2005.

The respondent had filed civil suit in the Court of Civil Judge, Jr. Dn., Hinganghat, being Regular Civil Suit No. 1 of 2005, thereby claiming that he is the tenant of the applicant no.1-Trust and that the applicants are trying to forcibly evict him from the tenanted premises.

An application came to be filed under Section 9A of Code of Civil Procedure, on behalf of the present applicants stating therein that the jurisdiction of the Civil Court is barred under Section 85 of the Wakf Act,

1995. The learned trial Court, vide judgment and order dated 26th July, 2005, held that the suit pertains to the Wakf property and, therefore, the Civil Court had no jurisdiction in view of Section 85 of the Wakf Act. Being aggrieved thereby, the respondent preferred Misc. Civil Appeal No. 62 of 2005. Same came to be allowed vide judgment and order dated 25th November, 2005. Being aggrieved thereby, the applicants are before this Court.

Shri Khamborkar, the learned counsel for the applicants, submitted that the Tribunal constituted under Section 83 of the Wakf Act, has wide powers including to grant injunction in any suit relating to Wakf property. The jurisdiction of the Civil Court is specifically barred and the same lies with the Tribunal so constituted. He relied on the judgment in the case of **Salam Khan Vs. Tamil Nadu Wakf Board, Chennai & others** reported in **AIR 2005 Madras 241**.

As against this, Shri Sohoni, the learned counsel appearing on behalf of the respondent, submitted that the suit was simplicitor between tenant and landlord and it has nothing to do with the Wakf property. He submitted that since the applicants were trying to dispossess the respondent, he was compelled to file the said suit. He relied on the judgment of the Allahabad High Court in the case of **Yashpal Lala Shiv Narain Vs. Allatala Tala**

Malik Waqf Ajakhan Mus reported in **AIR 2006 Allahabad 115**.

It is a settled law that the aspect of the jurisdiction has to be gone into solely on the basis of the averments made in the plaint. For deciding the question of jurisdiction, it is not permissible to read the averments made in the written statement. It can be seen from the averments in the plaint that the respondent does not raise any dispute regarding the suit property being a Wakf property or not. He has stated that he has taken the suit premises on rent from the applicant no.1-Trust. As the applicant no.2 to 5 had come to his house and threatened to take forcible possession, apprehending his dispossession, he has filed the present suit. In my view, therefore, suit cannot be said to be a suit relating to any matter regarding Wakf or Wakf property under the Wakf Act. Suit is a suit simplicitor for declaration and injunction that the respondent should not be evicted by the applicants by force.

In that view of the matter, no infirmity could be found with the order passed by the learned appellate Court. The learned appellate Court has clearly observed that the suit does not fall in the category of a suit for which the Civil Court does not have jurisdiction as specified in Section 85 of the said Act.

Civil revision application is, therefore, devoid

of any substance and hence rejected.

JUDGE

RMP